

Remarks

Claim Objections

Claim 4 was objected to due to the use of “—” instead of commas “,”. Claim 4 has been amended to remove the “—” and insert “,” in their place. This overcomes the claim objections to claim 4.

Claim Rejections

The Office Action notes that Blaschke may be overcome by a showing under 37 CFR 1.132 that the invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention “by another”; or by an oath or declaration under 37 CFR 1.130 stating the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 USC 104, together with a terminal disclaimer in accordance with 37 CFR 1.321 (c). Applicant is willing to provide a terminal disclaimer, if necessary.

Claim Rejections Under 35 USC 102

Claims 1-10, 14 and 15 are rejected under 35 USC 102(e) as being anticipated by Blaschke et. al. US Patent Application 2003/0027090.

Valid rejection under 35 USC 102 requires that each feature of a rejected claim be disclosed in a single reference. “For anticipation under 35 USC 102, the reference must teach every aspect of the claimed invention either explicitly or impliedly. Any feature not directly taught must be inherently present.” MPEP 706.02(a)

Applicant respectfully maintains that, regarding claim 15, Blaschke does not mention or hint that the evaporator arrangement included in Blaschke’s evaporative burner can be used within an exhaust gas purification system for purifying the gases

emitted by an internal combustion engine. The Office Action refers to paragraph [0052] in this context. However, Blaschke's paragraph [0052] only refers to those exhaust gases that arise within the burner itself.

Therefore, Applicant respectfully maintains that claim 15 is not anticipated by Blaschke, and is therefore not anticipated by Blaschke.

Oath and Declaration

According to 35 USC 102(e), "A person shall be entitled to a patent unless...(e) the invention was described in an application for patent, published under section 122(b), by another filed in the United States before the invention by the Applicant for patent..."

It should be noted that Applicant's attorney is the attorney of record for both Blaschke and the present application, and hence, has knowledge of both applications. In relation to claims 1-10, and 14, which are rejected under 35 USC 102(e), Applicant's attorney, on behalf of Applicant, hereby makes the following declaration under 37 CFR 1.130, regarding Blaschke US Patent Application No. 2003/0027090 and the present application (10/614,302) which were wholly owned by the same organization, and have remained and are currently wholly owned by the same organization. Further, both patent applications share a common inventor, namely Günter Eberspäch.

According to MPEP 804.03, subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person. Both Blaschke and the present application, at the time the respective claimed inventions were made, were

subject to an obligation of assignment to the same person, i.e., Eberspächer GmbH & Co. KG. The inventors of both of these applications were employees of Eberspächer GmbH & Co. KG and invented this subject matter in their capacity as employees of Eberspächer GmbH & Co. KG, assigning their rights to their employer.

Declaration Under 37 CFR 1.132

Applicant includes the following declaration, stating that US Patent Application 2003/0027090 (Bläschke) was derived from one of the same inventors (namely, Günter Eberspäch) and was wholly owned by the same assignee (namely, Eberspächer GmbH & Co. KG) as the present invention at the time of both inventions, has remained to be, and is currently wholly owned by the same assignee. Thus, the presently cited reference to Bläschke is not the invention "by another". This Declaration should overcome the rejections of claims 1-10 and 14 under 35 USC 102(e) on the basis of the patent application to Blaschke.

Now comes Applicant's attorney of record, M. Robert Kestenbaum, Registration No. 20,430. I do hereby declare that I am the duly appointed representative for the co-inventors and assignee for both US Patent Application 2003/0027090 and the present invention, US Patent Application 10/614,302. I do hereby declare and make the following unequivocal statement on behalf of the co-inventors and assignee, as their duly appointed representative:

- US Patent Application 2003/0027090 and the present invention, US Patent Application 10/614,302, share the same assignee, Eberspächer GmbH & Co. KG.

- Further, the present invention, US Patent Application 10/614,302, was derived from US Patent Application 2003/0027090 by one of the same inventors, namely, Günter Eberspäch.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful statements may jeopardize the validity of the application or any patent issued thereon.



M. Robert Kestenbaum, Registration No. 20,430
Attorney of Record



Date

Applicant respectfully maintains that this oath or declaration overcomes the claim rejections under 35 USC 102(e), as Blaschke is not an invention by "another" that would preclude patentability of the present application.

Claim Rejections Under 35 USC 103

Claims 11-13 are rejected under 35 USC 103(a) as being obvious over Blaschke US Patent Application 2003/0027090.

Regarding claim 11, Applicant respectfully notes that it is not at all obvious to modify the evaporative burner of Blaschke to include a heat exchanger for the transfer of process heat out to the mixing material provided for mixture formation. This is because in Blaschke's burner, the process heat is produced within the flame tube 22 (Fig. 2), remote from the air supply housing 12, which defines the passageway of the mixing material, i.e., the combustion air (indicated by the arrows P₁ in Fig. 2). Taking into account the constructive complexity of Blaschke's burner, a very ingenious device would be needed to transfer heat from the flame tube 22 to a region upstream of the air supply

housing 12. Even with impermissible hindsight, this would be a feat and would not be obvious. Further, Blaschke's burner is for heating purposes and diverting a part of the heat produced for a different purpose would be detrimental to its heating purposes.

Regarding claims 12 and 13, it must be noted that there is neither mention nor hint in Blaschke that the evaporator arrangement included in Blaschke's evaporative burner can be used within a reformer for the recovery of hydrogen from a hydrocarbon/mixing material, i.e., a reformer for a fuel cell. Blaschke's disclosure is restricted to an evaporative burner for heat generation by combustion of a liquid fuel/air mixture. Applicant respectfully does not believe that transferring ideas from the liquid fuel burner technology to the technical field of fuel cells was obvious.

Rejection under 35 USC 103 requires that the cited art strongly suggests or motivates the ordinary person skilled in the art to apply the features of Blaschke's disclosure to the rejected claims to achieve the claimed invention.

Based upon the argument presented above, Applicant strongly believes that the present invention, as claimed, is not obvious over Blaschke. Therefore, the present claims should be allowable.

A three-month extension of time in which to respond to the outstanding Office Action is hereby requested. PTO-2038 authorizing credit card payment for the amount of \$1,020 is enclosed for the prescribed Large Entity three-month extension fee.

Wherefore further consideration and allowance of the application as amended is respectfully requested.

Respectfully submitted,



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CERTIFICATE OF FAX TRANSMISSION

I hereby certify under 37 CFR §1.8 that this correspondence is being submitted by facsimile transmission to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on 02/10/2006, fax number (571) 273 8300.



M. Robert Kestenbaum